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THE  
PLEA OF INSANITY,  
IN CRIMINAL CASES,

BY

✓  
FORBES WINSLOW, ESQ.,

MEMBER OF THE ROYAL COLLEGE OF SURGEONS, LONDON.

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TO

SIR FREDERICK POLLOCK, M.P.,

HER MAJESTY'S ATTORNEY GENERAL,

ETC. ETC. ETC.

THIS WORK

Is Respectfully Dedicated

BY

THE AUTHOR.





## P R E F A C E .

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It has been the object of the author of this work to convey to the reader a correct notion of the present state of the law in relation to the plea of insanity in criminal cases.

In order to effect this object, he has referred to all the established legal and medical authorities in which this topic is made the subject of consideration, as well as to the decisions, charges, and judgments of the most illustrious ornaments of the bench, in cases where insanity has been urged as an exculpatory plea.

This subject, it will be readily admitted, is one of great interest and importance. The life of a fellow-creature is often dependent on the evidence given in a court of justice, when cases of this kind become matters of judicial inquiry. A person ignorant of the character and peculiarities of disordered intellect,—of the pathological condition of the human mind,—of its strange

caprices, — of the influence of external and internal agents in disordering its manifestations, may, by his evidence, consign a human being, deprived of his reasoning faculties, having no control over his thoughts and actions, to an ignominious death. The judge and jury, never having had opportunities of studying the diseases of the mind, must depend principally upon the evidence of the medical men; if they, too, have not investigated the subject, how perilous is the position of the unhappy man charged with the commission of a capital crime!

It may be urged, that it is only the province of the judge to state to the jury the law on criminal insanity; and that to do this, it is unnecessary that he should be intimately conversant with the peculiar characteristics of mental derangement. This is altogether a fallacy. To do justice in such cases, it is absolutely requisite that not only the medical men examined, but that the judge and the jury should be well informed on the subject of insanity. The time, I hope, is not very distant, when there will be instituted for the investigation of cases, in which it is important to establish the existence or non-existence of aberration of mind,

a separate jurisdiction, presided over by persons whose attention has been specially directed to the study of mental aberration.

No man is considered competent to give an opinion on a complicated question of mechanics, who has not paid some attention to the science ; neither would the evidence of the first physician or surgeon in Europe be of any value on an intricate point of law. If an attempt were made to bring forward such evidence, in support of any case requiring for its elucidation a knowledge of either mechanics or law, the counsel would expose himself to the laughter of the court ; yet medical knowledge is thought to come by intuition ; the jury, not one of whom may have seen a case of insanity, or have given the subject a moment's consideration, are called upon to decide whether the mind, in a particular case, is sufficiently well balanced to enable its possessor to form an accurate judgment between right and wrong ; or, in other words, whether a person alleged to be insane ought to be viewed as a responsible agent.

These are points not easy of solution, even to those whose time and talents have been zealously and almost exclusively devoted to their investigation.

It is the author's purpose, in preparing this work for the press, to compress within a small compass the most important facts which he conceives may be of assistance, in enabling those, who have to adjudicate in cases of this description, to form an accurate judgment of the presence of insanity, in any case in which it may be said to exist. He sincerely hopes that what he feels himself compelled to say, with reference to the present defective state of the law, in so far as it relates to the plea of insanity, may have the effect of inducing others, more competent than himself, to grapple with so important a subject, with the view to the diffusion of sound principles in connexion with it.

45, Guildford Street, Russell Square,  
*February, 1843.*

# THE PLEA OF INSANITY,

&c. &c.

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INSANITY, when viewed as a question of jurisprudence, resolves itself into three divisions, viz. —

- I. AS TO THE ALLEGED LUNATIC'S COMPETENCY TO MANAGE HIMSELF OR HIS AFFAIRS ;
- II. WHETHER THE PARTY IS SUFFICIENTLY *compos mentis* TO PERFORM CIVIL CONTRACTS ; WHETHER HIS WILL OR TESTAMENT OUGHT TO BE CONSIDERED AS A GOOD WILL OR TESTAMENT ;
- III. WHETHER THE PERSON, SAID TO BE OF UNSOUND MIND, IS, OR IS NOT, A RESPONSIBLE AGENT.

I wish to confine my observations almost exclusively to the latter point. I shall, in the first place, refer briefly to the doctrines laid down by the great legal authorities of this country, on the subject of insanity, in as far as it places the party beyond the pale of the law, in criminal cases.

With regard to the legal irresponsibility of

persons of unsound mind, Lord Hale entertained extreme views. "In order," he says, "to exculpate a person from the penalty attached to criminal offences, there must be a defect of the understanding, unequivocal and plain, not the mere impulse of passion, or of idle frantic humor, or unaccountable mode of action, but an absolute dispossession of the free and natural agency of the human mind." Lord Hale attempted to establish a distinction between general and partial insanity. He says, "Although the line which divides these two states is invisible, and cannot be defined, yet the existence of one or the other of them must be collected from the circumstances of each particular case, duly to be weighed by the judge and jury; lest, on the one hand, inhumanity be manifested towards the defects of human nature, and on the other, too great an indulgence be given to the commission of great crimes." This distinguished judge again observes, that "there is a partial insanity of mind, and second, a total insanity. The former is either in respect to things, *quoad hoc vel illud insanire*. Some persons who have a capital use of reason, in respect of some subjects, are yet under a particular dementia, in respect of some particular discourses, subjects, or appli-

cations, or else it is partial in respect of degrees ; and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect, in excessive fear and grief, and yet are not wholly destitute of the use of reason ; and this partial insanity seems not to excuse them in the committing of any offence, in the matter capital, for doubtless most persons, that are felons of themselves, and others, are under a degree of partial insanity, when they commit these offences."

*Non compos mentis*, according to Lord Coke, is of three kinds: —

"1st. Idiota, who from his nativity, by a perpetual infirmity, is *non compos mentis*.

"2nd. He that by sickness, grief, or other accident, wholly loses his memory and understanding.

"3rd. A lunatic that sometimes has understanding and sometimes not ; *aliquando gaudet lucidis intervallis* ; and therefore is called *non compos* as long as he hath not understanding."

Lord Coke, when speaking of the irresponsibility of lunatics, and in alluding to the object of all punishment, viz. the prevention of crime, says, "*Ut pœna ad paucos, metus ad omnes perveniat* ; but so it is not when a madman is

executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others.”<sup>1</sup>

The views of Lord Chief Justice Mansfield, as developed on the trial of Bellingham, for the murder of Mr. Percival, on this subject, are as follows: on the plea of insanity, in criminal cases, Lord Mansfield says, “The law was extremely clear. If a man was deprived of all power of reasoning, so as not to be able to distinguish whether it was right or wrong, to commit the most wicked or the most innocent transaction, he could not certainly commit an act against the law. Such a man, so destitute of all power of judgment, could have no intention at all. In order to support this defence, however, it ought to be proved by the most distinct and unquestionable evidence that the criminal was incapable of judging between right and wrong. It must in fact be proved, beyond all doubt, that at the time he committed the atrocious act, with which he stood charged, he did not consider murder was a crime against the laws of God and nature. There was no other proof of insanity which could excuse murder or

<sup>1</sup> Coke, Inst. 6.



any other crime. There were various species of insanity. Some human creatures were void of all power of reasoning from their birth; such could not be guilty of any crime. There was another species of madness, in which persons were subject to temporary paroxysms, in which they were guilty of acts of extravagance; this was called lunacy. If these persons committed a crime when they were not affected with the malady, they were, to all intents and purposes, amenable to justice. So long as they could distinguish good from evil, so long would they be answerable for their conduct. There was a third species of insanity, in which the patient fancied the existence of injury, and sought an opportunity of gratifying revenge by some hostile act. If such a person was capable, in other respects, of distinguishing right from wrong, there was no excuse for any act of atrocity which he might commit under this description of derangement. The witnesses who had been called to support this extraordinary defence had given a very singular account, in order to show that at the time of the commission of the crime the prisoner was insane. What might have been the state of his mind some time ago was perfectly immaterial. The single question was,

whether at the time this act was committed, he possessed a sufficient degree of understanding to distinguish good from evil, right from wrong, and whether murder was a crime not only against the laws of God, but the law of his country."

The next legal authority, to which I shall refer, is that of Lord Erskine. That distinguished judge in his celebrated speech on the trial of Hadfield, for firing at George the Third, a speech which has been pronounced to be one of the most masterly he ever delivered in a court of justice, enters at some length into an elucidation of criminal insanity. Lord Erskine considers that the *dicta* of Lord Coke and Lord Hale, that to protect a man from criminal responsibility, there must be a "total deprivation of memory and understanding," as untenable, if we are to attach to the words used by these great lawyers a *literal* signification. *Delusion*, where there is no frenzy, Lord Erskine conceives to be the true character of insanity. Where this cannot be predicated of a man accused of a criminal offence, he ought not to be acquitted. "If the courts of law," observes Lord Erskine, "are to be governed by any other principle, every departure from sober, rational

conduct, would be an emancipation from criminal justice." He again says, "To deliver a lunatic from responsibility to criminal justice, the relation between the disease and the act should be apparent. When the connexion is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind. Viewed, however, as a principle of law, the delusion and act should be connected." Lord Erskine then proceeds to the consideration of the doctrine — that every person, who has the knowledge of good and evil; whatever delusions may overshadow the mind, ought to be responsible for crimes. He considers that there is something too general in this mode of viewing the subject.

In order to show the inapplicability of such a doctrine, he puts the following hypothetical case: — "Let me suppose," says Lord Erskine, "the character of an insane delusion consisted in the belief, that some given person was any brute animal, or an inanimate being, (and such cases have existed,) and that upon the trial of such a lunatic for murder, you being upon your oaths were convinced, upon the uncontradicted evidence of one hundred persons, that he believed

the man he had destroyed to have been a potter's vessel; that it was quite impossible to doubt that fact, although to all other intents and purposes he was sane; answering, reasoning, and acting as men, not in any manner tainted with insanity, converse and reason, and conduct themselves; suppose further that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious; and that in short, he had full knowledge of all principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation in which he stood to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being?"

It will be perceived by the following judgment of Lord Lyndhurst, that he considers the test of responsibility, in criminal offences, to consist in the person accused being conscious that he was committing an offence against the laws of God and nature.

In the case of *Rex v. Offord*, for the murder

of a person of the name of Chisnall, the defence was insanity. From the evidence it appeared that the prisoner entertained the idea, that the inhabitants of Hadleigh, particularly Chisnall, the deceased, were continually issuing warrants against him, with the intent to deprive him of his life and liberty; and that he would frequently, under the same notion, abuse persons whom he met in the street, and with whom he never had any dealings or acquaintance of any kind. In his waistcoat pocket was found a paper headed "List of Hadleigh conspirators against my life." It contained forty or fifty names, and among them "Chisnall and his family." There was also found among his papers an old summons about a rate, at the bottom of which he had written these words, "This is the beginning of an attempt against my life." Several medical witnesses stated it to be their belief, from the evidence they had heard, that the prisoner labored under that species of insanity which is called monomania, and that he committed the act while under the influence of that disorder, and might not be aware that, in firing a gun, his act involved the crime of murder. Lord Lyndhurst, who was then Lord Chief Baron, on summing up, told the jury that they must be

satisfied, if they would acquit the prisoner on the ground of insanity, that he did not know, when he committed the act, what the effect of it, if fatal, would be. With reference to the crime of murder, the question was, did the prisoner know that he was committing an offence against the laws of God and nature? His lordship referred to the doctrine laid down in Bellingham's case, by Lord Chief Justice Mansfield, and expressed his complete concurrence in the observations of that learned judge. The jury acquitted the prisoner on the ground of insanity.

Sir J. Nicholl, in the case of *Dew v. Clark*, draws a correct legal distinction between insanity, considered as affecting the civil obligations of the lunatic, and that form or degree of mental unsoundness, which annuls his criminal responsibility. He justly observes, that the law recognizes partial insanity; and in some cases this partial insanity, if existing at the time the act is done, if there be no clear lucid interval, invalidates the act, though not directly connected with the act itself; but in criminal cases it does not excuse from responsibility, unless the insanity is proved to be the *very cause of the act*.

It will then appear, from what is previously stated, that the principles, by which the criminal

jurisprudence of this country is guided in cases of insanity, are the capability of distinguishing between right and wrong — of knowing that the crime, of which the party may stand accused, is an offence against the laws of God and nature.

According to the 64th article of the French penal code, no person, whilst insane, is considered responsible for a criminal act, "*Il n'y a ni crime ni délit lorsque le prévenu était en état de démence au temps de l'action.*" In opposition, however, to this article, M. de Peyronnet, the Advocate General of France, in the cases of Leger, Feldtmann, and other insane homicides, adopted the view of Lord Hale on this subject, as to the existence of a partial and a total insanity, laying down the principle, that the letter "can alone extricate the criminal from the penalties of the laws."

"The distinction between partial and total insanity," he observes, "throws great light on the questions of insanity." In confirmation of this view of the case, he referred at some length to the opinions of Lord Hale, and quoted a passage from the "Pleas of the Crown," which I have previously referred to. The line of argument, however, adopted by the Advocate General on these occasions, displeased highly the medical



jurists of France. M. Georget, a physician of great reputation, who has paid much attention to the subject of insanity, particularly in its relation to medical jurisprudence, has expressed his astonishment at the *dicta* of Lord Hale. M. Georget says, "This writer, (Lord Hale,) appears professedly to consider property of higher value than human life! There is then no excuse for the unfortunate lunatic, who in a paroxysm commits a reprehensible action, even although it should appear to be the result of his particular illusion! and yet the civil acts of this same individual are to be annulled, although they have no relation to the insane impressions which might have influenced his conduct! And even M. de Peyronnet cited such maxims as these with approbation, at least we do not find that he has objected to any of them; all monomaniacs, according to their statements, are liable to become criminals in spite of the 64th article of our penal code, and may undergo the penalties recorded for atrocious offences."

Many objections have been urged against the test of insanity in criminal cases, as laid down by the judges of the land. That their *dictum* has not invariably guided the jury, in cases of this character, is clear from several instances,



which I shall presently cite. But it is, however, established by a multitude of cases in English and Scotch jurisprudence, that as a *general principle*, this test, viz.—the competency to distinguish between right and wrong, has been the main point kept in view when the plea of insanity has been urged as an extenuation of crime. Thomas Gray, July 27, 1773, was indicted for murder. It appeared on his trial that he was a man of a very weak intellect; that he was subject to sudden gusts of passion. He drank excessively, and during the time he was under the influence of liquor, he was half crazy. This was not considered as good evidence of insanity, and he was accordingly found guilty. A man of the name of Bowler (July 2, 1812,) was tried for shooting Mr. Burrows. Insanity, occasioned by epilepsy, was pleaded in defence. It appeared that in July, 1811, he had an epileptic fit, and that since that time he had become very strange in his demeanor, eating his meat almost raw, and lying on the grass exposed to the rain, and so dejected, that it was necessary to watch him lest he should destroy himself. This man had, in the month of June of the same year, been pronounced insane on a commission of lunacy.

Mr. Warburton, the keeper of the lunatic asylum, had no doubt of the insanity of the prisoner, and stated that persons subject to that species of madness often took strong antipathies, founded on illusions totally destitute of foundation.\* Mr. Justice Le Blanc laid it down to the jury, that they had to determine whether the prisoner, when he committed the offence, was incapable of distinguishing right from wrong, or under the influence of *an illusion*, in respect to the prosecutor, which rendered his mind at the moment insensible to the nature of the act he was about to commit; since in that case, he could not be legally responsible for his actions; but that if he were not under such illusion, or not incapable of distinguishing right from wrong, he was amenable to punishment. The jury, after much deliberation, found the prisoner guilty.<sup>1</sup>

Many able writers on jurisprudence have maintained that in no case where insanity is established, ought the person so unhappily afflicted to be considered as a responsible agent. So little, it is said, is known of the condition of the mind, even in cases of decided monomania,

<sup>1</sup> Collinson, 675; Russell, 1, 10.

or delusion upon one point only, that it is impossible to form anything like a correct notion of the condition of the other mental faculties, or to ascertain with anything like precision, to what degree they may be occasionally implicated in the disorder, and thus drive the person to the commission of capital offences. Although I am not prepared to give my unqualified approbation to this view of the matter, I am still ready to admit that I can conceive the possibility of cases occasionally occurring, where the existence of any one predominant delusion, and that delusion not in the slightest degree associated with the criminal act, ought to be considered as a sufficient exculpation in criminal cases. An able advocate, who has taken this humane view of the question, writes as follows :—

“ If it be true that there is none of the phenomena of yet imperfectly understood human nature, over which hangs a thicker veil to the general eye, than the phenomena of mental aberration, what are we to think of making distinctions, and drawing the line of responsibility with perfect confidence, as if all were clear between partial and total insanity? We humbly but earnestly suggest, that instead of deciding for responsibility in partial insanity, it is both

more just and more merciful to doubt as to that essential, when disease of mind, to a palpable and considerable amount, is proved. It is more just and more merciful in such a case to take care of the accused and of society by his confinement, than to run the risk of putting to death an irresponsible agent. Insanity, as far as we have the means of perceiving, is a bodily disease; in other words, its visible and invariable condition is a morbid action of the brain, either structural or functional. A definition of the effect in feeling, and manifestation of a diseased brain, which shall be sufficiently comprehensive to include all the varieties of insane affection, is scarcely to be looked for; yet definitions are constantly sought after in courts of law, and the whole value of a witness's evidence is often made to turn on its relation to a standard, which is in itself the merest assumption. It would be a safer rule for courts of law to direct their attention to the proof generally of diseased manifestations of the intellect and feelings; and when these are undoubted, to presume irresponsibility, because the contrary cannot be made sure of, and the balance of probability is greatly on the side of irresponsibility. If mercy is often extended to youth, to seduction, even to great pro-

vocation, how much more ought it to shelter diseases of the mind when clearly established? If it be true, and no physician denies it, that to diseases of the inflammatory class it is impossible to prescribe limits, or to predict that new and aggravated symptoms shall not suddenly follow in the course of the diseased action, is it not presuming too much to decide, that inflammation of the brain, the usual cause of insanity, has known boundaries, and shall not suddenly extend from partial to produce total insanity? We feel assured that no one conversant with insanity will deny the fact, that the insane, however partially, are not safe from sudden paroxysms and aggravations of symptoms."<sup>1</sup>

M. Georget, and Hoffbauer a celebrated German writer, dwell much upon the importance of attending to the prominent idea or delusion in the cases of persons arraigned for the commission of criminal offences, with the view of ascertaining whether the particular monomania has any relation to the crime which he has perpetrated. Georget says, "These insane persons, (monomaniacs,) though they appear to be rational in most respects, will, for the most part, be

<sup>1</sup> Edinburgh Law Journal, vol. i. p. 542.

found to have committed a number of extravagant actions, which render their seclusion from society necessary ; and the most skilful physician could not venture to say that they would conduct themselves in a rational manner, or that they would not enter into engagements the most injurious to their interest, or commit the most reprehensible actions." It appears to be the opinion of the most celebrated writers on medical jurisprudence, in this and other countries, that the legal test before referred to is far from being infallible.

I am disposed to express my complete concurrence in the views of Dr. Haslam, on this point, that "it is not the province of the medical witness to pronounce an opinion as to the prisoner's capability of distinguishing right from wrong. It is the duty of the medical man, when called upon to give evidence in a court of law, to state whether he considers insanity to be present in any given case, not to ascertain the quantity of reason which the person, imputed to be insane, may or may not possess." "If it should be presumed," says Dr. Haslam, "that any medical practitioner is able to penetrate into the recesses of a lunatic's mind, at the moment he committed the outrage ; to view the internal play of obtruding thoughts, and contending

motives, and to depose that he knew the good and evil, right and wrong, he was about to commit, it must be confessed, that such knowledge is beyond the circuit of our attainment. It is sufficient for the medical practitioner to know that the person's mind is deranged, and that such a state of insanity will be sufficient to account for the irregularity of his actions ; and that, in a sound mind, the same conduct would be deemed criminal. If violence be inflicted by such a person during a paroxysm of rage, there is no acuteness of metaphysical investigation, which can trace the succession of thoughts, and the impulses by which he is goaded for the accomplishment of his purpose."

In considering the subject of the criminal responsibility of the insane, many circumstances have induced me to differ from the views, which I know are generally entertained by my professional brethren on this question. I am not prepared to give an unqualified adherence to the doctrine, that the presence of disordered mind ought invariably to shield a person from responsibility ; for there are many cases of insanity, in which the patient appears to be perfectly competent to perform a correct process of reasoning, is aware of his legal irresponsi-



bility, and knows the distinctions between right and wrong.

An intriguing, unruly, vicious madman was detected with a piece of iron, which he had contrived to shape like a dagger; into this iron he firmly fixed a handle. The weapon was taken away from him. He immediately became excessively abusive, and he was placed under restraint. After this, he was more violent, and uttered the most revolting imprecations. In a fit of fury, he exclaimed to the keeper, "*I'll murder you yet: I am a madman, and they cannot hang me for it.*"

When Martin set fire to York-Minster, a conversation took place among the inmates of a neighboring madhouse relating to the circumstance. The question discussed was, whether Martin would suffer the extreme penalty of the law for the crime. Various were the opinions expressed. In the midst of the conversation, one patient, apparently as mad as the rest, exclaimed, "He (Martin) will not be hanged — of course he will escape." — "For what reason?" asked several voices. — "They cannot hang him," replied the lunatic, "because he is mad, — *he is one of ourselves!*"

If the following murder had occurred *out of*



*a madhouse*, with all its attendant circumstances, would there have been a doubt as to the justness of the penalty, if the man had been condemned to expiate his crime on the gallows? A patient, who was confined in the Manchester Lunatic Asylum, had been subjected to very cruel treatment, and in consequence of it, he killed the person who had the care of him. He related, with great calmness and self-possession, the particulars of the transaction to Dr. Haslam. He said, "The man whom I stabbed richly deserved it. He behaved to me with great violence and cruelty; he degraded my nature as a human being; he tied me down, handcuffed me, and confined my hands much higher than my head, with a leathern thong; he stretched me on the bed of torture; after some days he released me. I gave him warning; for I told his wife I would have justice of him. On her communicating this to him, he came to me in a furious passion, threw me down, dragged me through the court-yard, thumped me on my breast, and confined me in a dark and damp cell. Not liking this situation, I was induced to play the hypocrite. I pretended extreme sorrow for having threatened him, and by an affectation of repentance, prevailed on

him to release me. For several days I paid him great attention, and lent him every assistance. He seemed much pleased with the flattery, and became very friendly in his behavior towards me. Going one day into the kitchen, where his wife was busied, I saw a knife: this was too great a temptation to be resisted: I concealed it about my person, and carried it with me. For some time afterwards, the same friendly intercourse was maintained between us; but as he was one day unlocking his garden door, I seized the opportunity, and plunged the knife up to the hilt in his back." "He always mentioned this circumstance," says Dr. Haslam, "with peculiar triumph, and his countenance (the most cunning and malignant I ever beheld) became highly animated at the conclusion of the story."<sup>1</sup>

I would not, however, pronounce a hasty or inconsiderate judgment in cases of this character. We know so little of the workings of the human mind, either in its healthy or morbid state, that it is a point of great difficulty, in fact, almost an impossibility, to detect the line of demarcation, between responsibility or irre-

<sup>1</sup> Haslam on Madness.

sponsibility, or where one commences and the other terminates. This is a subject, however, which requires more consideration than medical jurists have hitherto given to it.

In the trial of Hadfield, Lord Erskine, who was his counsel, laid down the principle, that the delusion and the act should be connected. This was illustrated in Hadfield's case. This person imagined, that he had constant intercourse with our Saviour; that the world was coming to a conclusion; and that it was necessary that he should sacrifice himself for its salvation; and so obstinately did this morbid image continue, that he went to the theatre, to perform, as he imagined, that blessed sacrifice; and because he would not be guilty of suicide, though called upon by the imperious voice of heaven, he wished that by the appearance of crime his life might be taken away from him by others. Under this insane delusion, he fired at George the Third. There were many other circumstances which immediately led to the conclusion, that this man was unquestionably deranged. The facts connected with this case are too well known to require to be more particularly detailed.

There are on record, however, cases of ac-

quittal, where no connexion could be traced between the particular mental delusion of the prisoner and the act charged upon him. The following is one in point. I extract it from Mr. Amos's Lectures on Medical Jurisprudence. It occurred in 1809. Rebecca Hodge was tried at the Warwick Lent Assizes, for feloniously shooting at and wounding Samuel Birch, of that county.

Mr. Clark opened the proceedings, and recapitulated the leading circumstances of the case.

“Sarah Bradbury was niece to Mr. Birch, and was his housekeeper. Between ten and eleven o'clock at night, on the 27th of February last, she left Mr. Birch in the kitchen asleep by the fire, and went to bed; shortly after she heard a noise, as if somebody was walking about in the kitchen, and soon after she heard the report of a pistol. She went down stairs, when her uncle was sitting where she left him. She asked him what was the matter. He said, nothing. She said, there was; she felt his head, and it was wet — it was all over blood. The house smelled strongly of powder. Her uncle then went out to a neighbor's house. Witness said the prisoner lived with her uncle from November to August, about seven years ago, and

the reason she went away was, that she went one Saturday to fetch a pail of water, and did not come back till the next Monday, and when she returned, her uncle would not take her into his service again.

“Samuel Birch said he lived at Ward End. On the evening of the 27th of February last, about eleven o'clock, he was awoke by the report of a pistol ; he felt hurt, and on raising his hand to his head, he found it wet ; his hair was scorched, and amongst his hair he found a bullet, which he threw on the ground. His niece came down stairs, and he went to a neighbor's house just by, when his head began to smart, and he discovered he was wounded. He observed the outer door open. The prisoner lived servant with him six or seven years ago, and she was turned away, because she left his service without leave. He had never seen her from that time till this accident, to his knowledge.

“Mr. Vickers, surgeon, of Birmingham, was sent for to Mr. Birch about half-past one in the night ; Mr. Birch told him he had been wounded on the head. On examination he perceived one wound on the back part of the head, and another that had been received from a bullet,

which was then lodged between the bone and the skin. This bullet he extracted, and the other was given to him, having been found on Mr. Birch's floor by the servant girl. The internal table of the skull was broken and extensively fractured. They were not perfect bullets, as there appeared not to have been lead enough put in the mould to make them round; one was flattened by striking against the skull. Witness saw the prisoner at the public office in Birmingham, and when she knew that he was the surgeon who attended Mr. Birch, she inquired after him very anxiously; she said, 'He is not dead, I hope?' Witness asked the prisoner how she could account for attempting the life of Mr. Birch—did he ever behave ill to her? She said no, never. She then said she lived with Mr. Birch about seven years ago; the first part of her time he made love to her; but in consequence of her absconding, her master ordered Miss Bradbury to discharge her. From that period she said she vowed to be revenged. She liked Mr. Birch very much; she did not make the attempt sooner because she wanted courage. She said she made the bullets herself, and had rounded them with a knife. Prisoner said she had been near Mr. Birch several times,

as he had been going from market, but he did not know her, as she had men's clothes on, and a great coat over them. Prisoner said she was in Mr. Birch's tool-house on the Sunday, and was discovered by a boy, of whom she inquired the road to Birmingham, and then went away. She loitered about till Monday night, when she returned to Mr. Birch's house; waited till Miss Bradbury had gone to her room and put the candle out. The prisoner said she then went to the kitchen window, and looking under the shutter, saw Mr. Birch asleep by the fire-side. She then tried the door, which was on the latch, and went in with the pistol cocked in her hand. She said she walked about the house many times, and moved several things to make a noise, on purpose to wake him. She said if he had awoke he would have prevented her from shooting him, and turned her out. She then went to Mr. Birch, and shot him as he sat in his chair. Prisoner said she stopped in the house till she heard Miss Bradbury call, when she ran into the meadow. There she reloaded the pistol for the purpose of defending herself, expecting the neighborhood would be alarmed and come in pursuit of her. She lost herself in the meadow, and returned close by the house.



“ William Payne, jailor, deposed that when the prisoner was brought to the prison she was dressed in a dark coat, waistcoat, trowsers, and a round hat. He put his hand on her cheek, and said she was a woman. He searched her, and found in her pocket a gown and cap. The pistol was loaded with shot, mixed with the powder, without any paper between them, and very little at the top. (Here the pistol was produced; it was a brass-barrelled horse pistol.) In the morning the prisoner told him she had relations in town. Witness said he would send for them, that she might be released. Prisoner answered, it would be of no use, she would soon be brought there again. Witness asked her for what? and prisoner answered, ‘For shooting a man.’ Mr. Payne, in his cross-examination, said he thought, from her manner, she had broken out of a place of confinement; and when she said she had shot a man he did not believe her. He thought she was not in her right senses. When she was in the courtyard, she walked for a long time in the form of the figure eight, hung her head very low, looked sullen, and drooped.

“ On Miss Bradbury and Mr. Birch being asked the question, they both said they never



perceived in her any symptom of derangement.

“Richard Gallimore, a boy, who lived at Saltley turnpike gate, on the road from Birmingham to Ward End, said that, about three or four months ago, the prisoner came to the turnpike gate, and asked several questions concerning Mr. Birch, particularly if he were gone from market, and what horse he rode. This was between eight and nine o'clock at night.

“Here the evidence closed, and his lordship asked the prisoner if she had anything to say in her own defence. She said, no.

“Francis Woodcock was a magistrate, and lived in Worcestershire. The prisoner lived with him three years. She left him six or seven years ago; she showed in his service many symptoms of derangement, by talking to herself, by absenting herself from his service, by dancing by herself in the barn and fields, and by picking up sticks in one place and laying them down in another. She'd set up a fork in the middle of a field, and dance round it, saying, ‘Now Jemmy, my love, up the middle, down the side; that's it, my boy.’ The prisoner would go into the fields, and wander all day by herself; and one of the men, who had

gone forth to fetch her home, had put a halter round her middle, and led her back. He had pushed her into a pit of water with a rope round her, and she 'd only laugh at it. The impression upon him was, that she was not of right mind. She had always conducted herself in a virtuous and harmless manner.

“Mary Tupper, the prisoner’s sister, said she was not right ; she used to go from home two or three miles without her shoes, and sometimes with only one on. About three years ago she drove a staple up in the ceiling of her room, and took a rope to hang herself, but witness prevented her. She was very odd in her conduct by times ; she would go out sometimes with scarcely any clothes on her. When she was let go to market, she would often lose her butter or the money. She believed she was at times insane.

“His lordship then addressed the jury. He went through the whole of the evidence, commenting upon it at considerable length. His lordship, from his observations, seemed inclined to believe that the evidence was strong enough to prove that the prisoner was, at times, not in her right mind ; and he concluded with observing to the jury that, if they had any doubt, it

would be proper for them to let that doubt operate in favor of the prisoner. The jury instantly returned a verdict of Not guilty on the ground of insanity."

An attempt has been made to establish that the Earl of Ferrers, who was executed at Tyburn for the murder of his steward, Mr. Johnson, was insane at the time, and not a responsible agent. The case, as related by Lord Erskine, is as follows : — Lord Ferrers was divorced from his wife by act of parliament. A person of the name of Johnson, who had been his steward, had taken part in that proceeding, and had conducted the business in carrying the act through the two houses. Lord Ferrers consequently wished to turn him out of a farm which he occupied under him, but his estate being in trust, Johnson was supported by the trustees in his possession. There were also some difficulties respecting coal mines; and in consequence of both transactions, Lord Ferrers imbibed the most violent resentment against him. This resentment, as Lord Erskine observes, was not founded on any *illusion* — it was not a resentment forced upon a distressed mind by fallacious images; but it depended upon *actual circumstances and real facts*, and

acting like any other man, when under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines. After he had killed Mr. Johnson, he exclaimed, "I am glad I have done it; he was a villain, and I am revenged." When he saw that the wound was mortal, and involved consequences fatal to himself, he requested the surgeon to take all possible care of his patient, and, conscious of his crime, he kept at bay the men who came with arms to arrest him. "Who, then," asks Lord Erskine, "could doubt that Lord Ferrers was a murderer?"

Dr. A. Combe enters very fully into the details of this case, with a view of showing that the Earl Ferrers was unquestionably of unsound mind. In support of this view of the case, it is stated that his lordship had long been beset with unfounded suspicions of plots and conspiracies, unconnected ravings, sudden starts of fury, denunciations of unprovoked revenge, frantic gesticulations, and a strange caprice of temper. It was proved that insanity was an hereditary disease in the family, and that several of his relatives had suffered from madness. At

one time his nearest relations had debated on the expediency of taking out a commission of lunacy against him. We cannot, however, concur in Dr. Combe's view of the case. Had Lord Ferrers labored under an illusive imagination with respect to his steward, and in this state of mind had killed him, the character of the case would have been completely altered; but his quarrel with Johnson did not originate in any morbid images which had fastened themselves on his imagination—it was founded upon existing facts; and while under the dominion of violent passion, (not insanity,) he committed the murder.

In many cases of persons unequivocally insane, it is impossible to trace the connexion between the particular hallucination of the mind, and certain acts which are considered criminal in the eye of the law. There may be a direct relation between the two, but which the lunatic, not being under any apprehension of the consequences, cunningly conceals from observation.

In some of these cases of homicidal insanity, the unfortunate patient is driven to the commission of the crime, under the notion, that conspiracies are formed against him, and that it is necessary to take away the life of some hu-

man being in order to preserve his own. This kind of illusion is a common feature in cases of insanity. For some period before the disordered condition of the imagination becomes very apparent, and often long before medical treatment or confinement are considered necessary, the patient may fancy that his nearest relatives and dearest friends are leagued against him. A person laboring under this form of monomania has been known, for a considerable length of time, to conceal it. Esquirol relates a case of a patient, who attempted several times to commit suicide. He would ask for a pistol in order to shoot himself, saying, "I am tired of life." He displayed no illusions, and was of a cheerful turn of mind. It was not until after the lapse of *two years*, that he confessed himself to labor under hallucination both of sight and hearing. He believed himself to be pursued by officials of the police ; he saw and heard them, as he imagined, through the apertures of his apartment, of which he asserted that the walls were made of pannels, so arranged, that all he said and did might be perceived from without. Very often in these cases, although it is well known that the patient is laboring under an hallucination of this character, and fancies that

secret plots are contrived against him, he has, to the last, refused to admit the existence of the delusion. A deeply interesting case, illustrative of this form of insanity, (although in this instance the morbid delusion was apparent,) is related by Dr. G. Smith, in his work on Medical Jurisprudence. The particulars were communicated to him by the brother of the unhappy maniac. The patient, notwithstanding his firm belief in the existence of a conspiracy, which had assumed, as he imagined, a national character, committed no act of violence. Had he, however, while under the influence of these deranged perceptions, taken away the life of any of the "gang," "infernal crew," or "conspirators," whom he supposed were continually pursuing him, it is questionable whether any judge would have been warranted in sending him to the gallows.

"My poor brother seems to have fallen a victim to a morbidly keen sensibility, aggravated by disappointments. The natural delicacy of his own feelings had created in him the tenderest regard for those of others; indeed he would not have injured the meanest reptile. In all his transactions he was scrupulously conscientious, and, as the superintendent of an extensive manu-



facturing concern, he had displayed great intelligence, mental energy, and activity. The few hours which he could snatch from business were devoted to literature, philosophy, and science, especially mathematical science and metaphysics.

“Being on a visit to London, six years before his death, he complained severely of having experienced neglect from those who ought to have been his friends, and spoke of private enemies; but no irrational sentiment escaped him, except, perhaps, his avowal, that having been all his life incredulous on the subject of supernatural appearances, he at last fully believed, from *ocular demonstration*, in evil spirits and apparitions.

“On his return to the metropolis, two years afterwards, he strongly and anxiously asserted the existence of a foul conspiracy, extensively ramified against his reputation and happiness. Almost every person with whom he had the least intercourse was a conspirator, and even the passengers in the streets were agents and abettors. He could not enter a house without meeting a foe; and at all hours of the day and night he was annoyed in his apartments, which he was obliged to change seven or eight times



in the course of a few months. He had frequent quarrels with strangers, who were constantly assailing him, as he fancied, with taunting gestures and language. His character, conduct, and motives were so malignantly impugned, that he found it expedient to show his own good sense of his integrity by adopting the motto, '*Mens conscia recti*,' and having it engraved on his seal. If he proposed an excursion to any part of the environs of London, he was compelled to relinquish the design, in consequence of his indefatigable persecutors having become acquainted with his intention; and from every place of public resort he was debarred by their malicious interference.

"He expressed a desire to consult the late Dr. Colquhoun, the magistrate, and Sir Samuel Romilly, as men of virtue and discernment; but finding the odium against him to have assumed a *national* character, he secretly embarked for America!

"So little apparent was his malady, that he obtained a respectable situation at New York. Thither, however, he was pursued by 'the gang,' 'the infernal crew,' and he recrossed the Atlantic, and returned to —shire, where, in 1820, nature sunk exhausted, according to his

own prediction, that his case must terminate fatally. During the whole progress of the disease his reasoning faculties remained unimpaired; he conversed agreeably on a variety of subjects; and could argue ingeniously, forcibly, and correctly. With reference to himself, while he admitted the improbability of such a system of persecution, (*à priori*,) he maintained the impossibility of resisting that strongest of all evidence, the evidence of the senses. ‘What I see and hear must be true.’

“The above are a few of the circumstances which occur to my recollection. I have felt the greatest difficulty in putting them on paper. I enclose, by way of elucidation, three of his letters.”

The unfortunate gentleman, here alluded to, was one of several brothers remarkable for their mutual attachment, and yet he was so completely under the influence of this delusion, as to suspect even the writer of the narrative of having some concern in the imaginary plot. On this point there seems to have been a hard struggle between his morbid feelings and better reason. In one of the letters he writes thus, “What am I to think of you? Am I to believe that you act in conjunction with those

rogues and strumpets, that have conspired to ruin me? Heaven forbid that the son of the ———, and my brother should be such a villain." In another, after some correct observations on a matter of business, he goes on in this manner: — "In a short time I may hope to escape out of this country, where it appears to be a settled point, that the laws of human intercourse are with regard to me to be suspended, and that I am to be hunted down without mercy. Had I a few thousand pounds, I would gladly expend one thousand in endeavoring to bring some of my adversaries to justice, and I am very confident that I should succeed; for notwithstanding the prejudices that have been so industriously excited against me, I do not believe that the course of public justice would be wholly obstructed. Considering how much you see of the world, and other circumstances unnecessary to mention, I do not wonder that you should declare your ignorance of a conspiracy which has nearly ruined me. I do not, however, accuse you of deceit; I leave your own conscience to condemn or acquit you, and I am sorry if I have at any time done you injustice."

In cases of murder, when insanity is urged

as an extenuating plea, it is necessary to inquire, whether the person have at any previous period of his life manifested any signs of mental derangement. If such be the fact, it ought to constitute a *prima facie* case in his favor. But such evidence is not always admitted in a court of justice. I cannot conceive upon what ground it could be excluded. In the case of Bellingham, Mr. Alley, the counsel for the prisoner, asked for a postponement of the trial, in order to allow time for procuring evidence of his insanity. He supported his claim by the affidavits of two persons, both declaring the assassin to be of unsound mind, and to have been so since his return from Russia, some two years before. One of these, after having heard that Bellingham had committed assassination, hastened to London, to give his testimony in behalf of his insanity, under the entire persuasion, that he was so afflicted. But neither of the witnesses had seen him within the last four months. It was therefore objected that, were he really insane, persons would have been found to have come forward to aver it, who had seen and known him during his recent residence in London, and on this ground further delay was refused, and the prisoner executed.

In the following cases, although there could be no doubt of the presence of insanity at the time of the murder, yet witnesses gave evidence of the existence of derangement of mind at an antecedent period.

Sir Archibald Kinloch had his mind injured by the acute delirium of a West India fever. He was afterwards liable to fits of mental derangement. During one of these attacks he killed his brother. The fit of insanity lasted only for a few days. The jury acquitted him on the ground of insanity. The case of Robert Spencer is another in point; this person, and the deceased, (whom he murdered,) who was a schoolmistress, occupied different floors in the same building. In the dusk of a particular evening, he rose from his bed in his shirt, knocked at the deceased's door; directly it was opened, he uttered some strange and incoherent exclamations, and struck the woman on the head with a hatchet and killed her. He then ran off to his own rooms, and when an attempt was made to seize him he endeavored to escape. Symptoms of mental disorder were apparent some days previous to this tragical occurrence. He manifested great restlessness, and disposition to wander into the country at all hours, and with-

out an object. It was also proved that, some years previously serving as a sailor, he had occasionally shown symptoms of derangement, which were aggravated by drinking, and that he had in consequence been sometimes confined for eight or nine days at a time. The jury acquitted the prisoner.

Jean Blair was tried on the 14th of March, 1781, for the murder of her mistress in a fit of frenzy. After killing her mistress, with whom she had lived many years as a confidential servant, she set fire to the house, broke the furniture, and ran out into the street stark naked, with her hands covered with blood, and gave the alarm of fire to the guard. It was established on the trial, that several of her family had been insane, and that she herself had manifested symptoms of derangement about ten years before. She was acquitted.

I have spoken only of crimes committed by persons, whilst under the influence of a perversion or disease of the mental faculties.

There is one form of insanity to which I wish to direct the particular attention of the reader, inasmuch as it has not hitherto been recognized in our English courts of judicature. I allude to a disordered condition of the moral affections

and propensities, unaccompanied by any delusion of the intellectual powers. M. Pinel, who first pointed out this state of the moral faculties, gave it the name of "*manie sans délire*."

Many medical writers consider this affection under the name of moral insanity. Dr. Mayo, who objects to this appellation, has termed it "brutality." In these cases the person manifests no mental delusion; is not monomaniacal; has no hallucination; does not confound fancies with realities; but simply labors under a morbid state of the feelings and affections, or in other words, a diseased volition. The intellectual faculties are apparently sound; the person often exhibits superior mental capacity, reasons ably, is conscious of his moral relationships, performs all the duties of life with praiseworthy and scrupulous exactness, and yet may be morally insane. These persons are said to be "insane in conduct and not in ideas." Pinel relates the following case illustrative of this form of mania: — An only son of a weak and indulgent mother was encouraged in the gratification of every caprice and passion, of which an untutored and violent temper was susceptible. The impetuosity of his disposition increased with his years. The money, with which he was lavishly



supplied, removed every obstacle to the indulgence of his wild desires. Every instance of opposition or resistance roused him to acts of fury. He assaulted his adversaries with the ferocity of a savage; sought to reign by force; and was perpetually embroiled in quarrels. If a dog, a horse, or any other animal offended him, it was instantly put to death. If ever he went to a fete, or any other public meeting, he was sure to excite such tumults and quarrels as terminated in a bloody nose. This wayward youth, however, when unmoved by passions, possessed a perfectly sound judgment. When he became of age, he succeeded to the possession of an extensive domain. He proved himself fully competent to the management of his estate, as well as to the discharge of his relative duties, and he even distinguished himself by acts of beneficence and compassion. Wounds, law-suits, and pecuniary compensations were generally the consequences of his unhappy propensity to quarrel. But an act of notoriety put an end to his career of violence. Enraged with a woman who had used offensive language to him, he precipitated her into a well. A prosecution was commenced against him; on the deposition

of several witnesses, he was condemned to perpetual imprisonment in the Bicêtre.<sup>1</sup>

This type of insanity exhibits itself in various forms. In many cases it is difficult to distinguish it from ungovernable passions, or from vicious habits, which justly render the person amenable to the laws of the land. This insanity may either result from an hereditary taint, from defective education, operating upon organs naturally disposed to take on a particular kind of action, or from physical disease of the brain, or those organs which have a powerful sympathy with the sensorium. As in disorders of the intellect, so in derangements of the moral perceptions, we often witness in particular families the gradations of the disease. Many persons, from early life, have exhibited a strong and overpowering tendency to acts of cruelty, to be incapable of distinguishing between right and wrong ; in fact, have manifested a total want of moral faculty, or in other words, have been *moral idiots*. Possessing good *mental* endowments, they have no idea of their moral duties. Vice appears to be their natural element, virtue their very antithesis. They stand

<sup>1</sup> Sur l'Aberration Mentale, pp. 156 - 159.

apart from other men, being a species *sui generis*. This is not, in the majority of cases, the result of immoral training, but it is a congenital defect. No amount of instruction, no degree of mental discipline, however rigidly enforced, privately or publicly, can subdue this vicious propensity. It is a disease dependent upon physical causes. The moral maniac is the slave of caprice; he is vindictive, passionate, easily takes offence, disregards truth, is addicted to habits of intoxication, fond of the society of the most depraved of his species, and extravagant in his habits. A person may manifest all these signs of derangement, and pass through the world, mix in society, occupy high stations, requiring the exercise of great presence of mind, and large attainments, without exciting the slightest suspicion in the minds of those with whom he is associated, that he is a maniac. When illustrating this condition of the moral perception, Dr. Mayo refers to the character of the Emperor Tiberius, as delineated by Tacitus. Swift's sketch of the celebrated and notorious Lord Wharton, is also considered by the same authority, as affording an accurate idea of this kind of moral perversion, or moral insanity, of which I am now speaking. Lord Wharton is

described as "being indifferent to applause," and "insensible to reproach." Again he says, "He is without the sense of shame or glory, as some men are without the sense of smelling,"<sup>1</sup>

It appears to be the general impression of medical men, who have paid much attention to this subject, that Frederick William of Prussia, father of Frederick the Great, was afflicted with moral mania. His infamous conduct towards his family, but particularly towards his son, is only explicable on this principle.

"About a dozen years before his death, his health gave way under his constant debaucheries and drunkenness; he became hypochondriacal, and redoubled his usual religious austerities. He forbade his family to speak of any subject except religion. He read sermons to them daily, and compelled them to sing psalms, punishing, with the utmost rigor, any inattention to these exercises. The prince and his sister soon began to experience his severity. He obliged them to eat unwholesome food, and drink nauseous beverages, and would even occasionally spit in the dishes served to them. He addressed them

<sup>1</sup> Mental Pathology, by G. T. Mayo, M.D.

only in the language of invective, and attempted frequently to strike them with his crutch. About this time he attempted to strangle himself, and would have succeeded in his design, had not the queen prevented him accomplishing his purpose. He was so brutally disposed towards the prince, that one morning, as he entered his bed-chamber, he seized him by the collar, and beat him cruelly with a cane, until obliged to desist from pure exhaustion. On another occasion he seized the prince by the hair of the head, and flogged him until he was weary, and then dragged him to the window, apparently for the purpose of precipitating him from it. The prince was delivered from his perilous situation by a servant, who heard his cries, and hastened to his assistance. Not, however, satisfied with treating him in this barbarous manner, he endeavored to make him sign an act, renouncing his claims to the succession of the Prussian throne, in favor of his brother. Not being successful in his design, he connived at the prince's escape from his tyranny, in order to obtain, from a court-martial, a sentence of death. This sentence he was, nevertheless, anxious to anticipate, for he attempted to run him through with his sword. Being unsuccessful in compassing

his death; he kept him in confinement, and turned all his thoughts towards converting him to Christianity. At this time we find the first mention of any delusion connected with his son, although it probably existed before. In his correspondence with the chaplain, to whom he had entrusted the conversion of the prince, he speaks of him as one who had committed many and heinous sins against God and the king, as having a hardened heart, and being in the fangs of Satan. Even after he became satisfied with the repentance of the prince, he showed no disposition to relax the severities of his confinement. He was left in a miserable room, deprived of all the comforts, and many of the necessaries of life; denied the use of pens, ink, and paper, and allowed scarcely sufficient food to prevent starvation. His treatment of the princess was also as barbarous. She was confined, and he used every effort to make her situation thoroughly wretched; and though after a few years he relaxed the persecution of his children, the general tenor of his conduct towards his family and others evinced little improvement in his disorder, till the day of his death.”<sup>1</sup>

<sup>1</sup> Lord Dover's *Life of Frederick II., King of Prussia.*

How many maniacs of this description are let loose upon society. As long as the intellectual faculties are sound, and the person manifests no delusion of mind, the law does not recognize the existence of any malady requiring coercive treatment. A man may, under the influence of disease of his moral powers, commit acts of extravagance, ruin himself and his family, become involved in all kinds of difficulties, indulge in habits destructive to both body and mind, and no restrictive or protective measures are adopted to save him from inevitable ruin. The absence of all hallucination or perversion of the mental powers is the only thing that saves such a person from the mad-house. Let this moral disorder be accompanied with the slightest derangement of the mind ; let the person imagine that he is commissioned by some unseen agent to perform certain acts ; and he is immediately brought within the cognizance of the law ; but until he manifests some degree of intellectual insanity, he is permitted to go at large with impunity, and is considered by the world to be perfectly sane. A person addicted to habits of intemperance is often heard to deplore the loss of all control over his vicious propensities, and to confess that he was only fit



for a jail or a lunatic asylum. Such individuals, in their lucid intervals, when the fit is off, reason calmly, rationally, and sometimes with considerable power; but they are, to all intents and purposes, unfit to have the management of themselves. It is the consideration of such cases that induces me to lament the want of establishments, intermediate between a prison (not a *school*, as Dr. Mayo suggests) and a mad-house.

The following affords a good illustration of the description of cases to which the present observations refer. In 1829, Mr. G. Combe saw a patient who had been confined in the Richmond Lunatic Asylum for the period of ten years. He was intelligent, ingenious, and plausible. He was represented as having "been a scourge to his family in childhood; he had been turned out of the army as an incorrigible villain; he had attempted the life of a soldier, had been repeatedly flogged, and had subsequently endeavored to murder his father."

With reference to this case, Dr. Crawford, physician to the asylum, makes the following observations:—"He never was different from what he is now; *he has never evinced the slightest mental incoherence on any one point,*

*nor any kind of hallucination.* It is one of those cases which throw a great difficulty in drawing the line between extreme moral depravity and insanity, and in discovering at what *point* an individual should cease to be considered as a responsible, moral agent, and answerable to the laws. The governors and medical gentlemen of the asylum have often had doubts, whether they were justified in keeping him as a lunatic. He appears, however, so totally callous with regard to any moral principle and feeling, so thoroughly unconscious of ever having done anything wrong, so completely destitute of all sense of shame or remorse when reproved for his vices or crimes, and has proved himself so utterly incorrigible throughout life, that it is almost certain that any jury, before whom he might be brought, would satisfy their doubts by returning him insane, which, in such a case, is the most humane line to pursue. He was dismissed several times from the asylum, and sent there the last time for attempting to poison his father; and it seems fit he should be kept there for life as a *moral lunatic*; but there never has been the least symptom of diseased action of the brain, which is the general concomitant of what is usually understood as insanity."

Cannot the reader call to mind cases very similar to that just related, that have come within the sphere of his own observation, for the cure and protection of which nothing whatever has been done? The gallows ends the career of many a moral maniac. Was not Lalievre a case of this kind? This man, who is represented to have borne a high character, murdered his mistress, two wives, whom he had successively married, his own son, and was at last arrested in his criminal course by being detected in stealing a child, whom he had destined to satisfy his savage appetite for blood. This maniac selected the period of parturition for the administration of poisons. The only motive assigned for his conduct was the delight, which he was presumed to take in witnessing persons suffer excruciating torture. This man was condemned to death and executed. Ought he not to have been sent to a mad-house?

Having said so much of general moral mania, I must now allude to that form of madness, the principal feature of which is a morbid, and often uncontrollable impulse to destroy. Marc, who has written ably on this subject, divides homicidal monomania into two classes, viz. the reasoning and the instinctive. In the former

variety the imagination appears to be unnaturally exalted; he commits the crimes with deliberation, under the influence of some hallucination or insane notion. In the latter class the person is impelled by a morbid impulse or blind instinct to shed blood. He is conscious of his infirmity; often endeavors to conquer the diseased propensity; bitterly laments its existence; and retains a sufficient amount of reason and presence of mind to place himself under restraint. This homicidal impulse may be suddenly developed — it may be a momentary feeling. It is somewhat analogous to the suicidal propensity; in fact the two propensities are often conjoined. Dr. Pagan observes that a patient confessed to him, that he never goes near an open window in the upper part of his house, without being afraid, as he thought he should yield to the extraordinary impulse, which he invariably feels when he has done so, to precipitate himself into the street. The same patient informed him, “that upon one occasion, while at sea, he became tormented with an inclination to throw himself overboard. He maintained this contest for some days, and describes it as being the most harassing and distressing that can be imagined. When he first experienced it, he

endeavored to laugh himself out of it, but it would not do; he had recourse to every kind of distraction which he could contrive, but it was of no avail. It left him when he went below, but the moment he came on deck, and looked at the sea, the same unaccountable desire came on him, and so worn out was he with the contest he was obliged to maintain, that he actually yielded to the uncontrollable impulse, and threw himself overboard. He was perfectly aware of his danger, and was quite ashamed of what he conceived his own folly.”<sup>1</sup>

Mrs. Trollope relates the particulars of three women, who, at different periods, whilst under the influence of a momentary paroxysm of delirium, or suicidal frenzy, precipitated themselves from the spire of Strasburg Cathedral. One of the unfortunate creatures, says Dr. Pagan, was a young girl, and the first symptom of a disordered mind which she manifested was that of excessive mirth. She laughed and shouted as if in extasy, and, having reached a point where nothing impeded her view of the abyss below, she sprang from the giddy eminence, screaming wildly as she fell.

<sup>1</sup> Medical Jurisprudence of Insanity.

I refer to these cases, to illustrate the character of these sudden impulses to destroy, always morbid in their character, which drive persons to the commission of either suicide or homicide.

The following are the particulars of some cases of this kind.

Dr. Zimmerman relates the case of a peasant born at Krumbach, in Swabia, who was often attacked with an irresistible inclination to commit murder. He felt the approach of the fit many hours, and sometimes a whole day, before its invasion, and, from the commencement of this presentiment, he begged to be secured and chained, that he might not commit some dreadful crime. "When the fit comes on," he says, "I feel under the necessity to kill, even were it a child." His parent, whom he tenderly loved, he declared would be the first victim of this murderous propensity. "My mother," he cried out, with a frightful voice, "save yourself, or I *must* kill you." Before the fit, he complains of being exceedingly sleepy; without being able to sleep, he feels depressed, and experiences slight twitchings in the limbs. During the fit, he preserves his consciousness, and knows perfectly well that, in committing a murder, he would be guilty of an

atrocious crime. When he is disabled from doing injury, he makes the most frightful contortions and grimaces, singing or talking in rhyme. The fits last from one to two days. When they are over, he cries out, "Now unbind me. Alas! I have suffered cruelly, but I rejoice that I have killed nobody."

The narrative is published of a lady, who, on returning home one afternoon, found her favorite female servant in tears. On questioning her, she flung herself upon her knees, and begged her mistress with earnestness to dismiss her from her service, in order to prevent the commission of a horrid deed. On being pressed to explain what she meant, she said, that for some weeks back, every night as she undressed her mistress's child, the whiteness of its skin inspired her with an almost overwhelming impulse to deprive it of life. She suffered unutterable torture in resisting the tendency, and every day she found her resolution growing weaker. Andral relates the case of a man of considerable scientific reputation, who became the subject of these horrid impulses. He was seized with an intense desire to deprive some human being of life. Frightened by a consciousness of his state, he voluntarily de-



prived himself of liberty. He prayed incessantly before the altar, that God would assist him in his struggle. When he felt the inclination arising, (for it assumed an intermittent character,) he had his thumbs tied together, and this slight physical obstacle for a time prevented him from gratifying the horrid propensity. Notwithstanding all his exertions, his malady increased, and he at length made an attempt at homicide ; after which, the monomania verged into general insanity, still marked with this predominant character. He eventually died raving mad.

Georget details the history of a man named Jaques Monnier, who, after committing many acts of violence and fury, escaped from his family, and took to the woods. His flight having excited considerable alarm, several persons were despatched by the authorities after him. On arriving at a field, where many laborers were at work, at a distance from one another, Monnier first threatened a man who was driving a cart, and immediately after pelted another with stones. The latter having escaped, he rushed upon an old man almost blind, and beat him on the head with a large stone until he had killed him. He then attacked a man who

was digging in a field, and killed him also with a spade. A few moments after, he met a person of the name of Propheti, on horseback, whom he struck down with stones, but was obliged to leave in consequence of his cries. He then chased some children, who, however, saved themselves from his fury. On being examined during his confinement, Monnier said that he well recollected having killed three men, and especially one, a relative of his own, whose death he greatly regretted. He added, that in his paroxysm of frenzy, he saw nothing but flames, and that blood was then delightful to his sight. At the end of a few days' imprisonment, he seemed to have entirely recovered his reason, but subsequently he relapsed. The court declined trying him, on the ground of insanity.

Dr. Michu knew a country-woman of a bilious, sanguine temperament, of simple and regular habits, but reserved and sullen in her manners. She had been ten days confined with her first child, when suddenly, having fixed her eyes upon it, she was seized with the desire of strangling it. The idea made her shudder; she carried the infant to the cradle, and went out, in order to get rid of so horrid a thought.

The cries of the baby, who required nourishment, recalled her to the house, when she experienced a still more ardent impulse to destroy it. She hastened away again, haunted by the idea of committing so horrible a crime. She raised her eyes to heaven, went to the church, and offered up a fervent prayer for divine assistance. The whole day was passed by this unhappy mother, in a constant struggle between the desire of taking away the life of her infant, and the dread of yielding to the impulse. She concealed her agitation until evening, when her confessor, a respectable old man, was the first to receive her confidence. He soothed her feelings, and recommended her to take medical advice. "When we arrived at her house," adds Dr. Michu, "she appeared gloomy and depressed, and ashamed of her situation. Being reminded of the tenderness due by a mother to her child, she replied, 'I know how much a mother ought to love her child; but if I do not love mine, it does not depend upon me.'" She soon after recovered, the infant having, in the mean time, been removed from her sight.

Gall states, that he knew a woman who experienced, especially at certain periods, inex-

pressible torture, and the fearful temptation to destroy herself, and to kill her husband and children, who were exceedingly dear to her. She shuddered with terror as she described the struggle that took place within her, between her sense of duty and religion, and the impulse that urged her to this atrocious act. For a long time she dared not bathe her youngest child, because an internal voice said to her constantly, "*Drop him in ; let him slip.*" Frequently she had hardly the strength and time to throw away a knife, which she was tempted to plunge in her own and in her children's breasts. Whenever she entered the chamber of her children or husband, and found them asleep, she was instantly possessed with the desire of killing them. Sometimes she precipitately shut behind her the door of their chamber, and threw away the key, to remove the possibility of returning to them during the night, if she should fail to resist the infernal temptation.

A French army surgeon, naturally of a lively and cheerful disposition, became thoughtful and melancholy, in consequence of pecuniary difficulties. He was now frequently observed to be studying the Scriptures, and reciting passages from the Bible. He was happily married, and

had four children. One morning, he summoned his wife and his children into the court of his house, and then informed them that it was his intention to kill them all, and afterwards himself. He descanted coolly on the propriety of homicide, and told his wife that she must first be the spectator of the destruction of her children, and then her own turn would come. She said, she entirely coincided in the justness of her husband's sentiments, and cheerfully agreed to the proposed tragedy. But she appeared suddenly to recollect that it would be proper for herself, as well as the children, to confess and take the sacrament, previous to their appearing before their final Judge. The monomaniac replied, that her proposal was most reasonable, but that it would be *absolutely necessary* that he took *some person's life that day*. With this purpose in view, he instantly set off for Salsbourg. His wife, having placed the children in security, made the best of her way to that town, and went directly to Dr. Otto, the friend of her husband, for advice. Her husband had already been there, and not finding the doctor at home, had gone away. The woman now recollected, and told the professor, that her husband had threatened *his* life for some imaginary

slight; but at that time she thought he was in jest. About mid-day the monomaniac came back to the doctor's residence, and appeared quite calm and peaceable. The professor invited him to go and see the hospital of the town, where he had a curious dissection to make; and they sat down to take some refreshment before proceeding thither. At their repast, he told his host that he had lately felt an immoderate impulse to commit homicide, and that he had actually murdered a peasant that very morning on his way to town. He confessed also, that he had entered a coffee-house, for the purpose of committing a second act of the kind, but had been diverted from his purpose. The murder of the peasant, it was afterwards found, was a mere fiction. Dr. Otto now turned the conversation to other subjects, and on all other topics the man appeared perfectly rational. They now set off for the hospital, and on their way the monomaniac met with an old acquaintance and fellow-campaigner. While they were greeting each other, the monomaniac suddenly struck his friend a violent blow on the pit of the stomach, exclaiming, with a loud burst of laughter, that he had done for him, as he had hit the *cæliac plexus*. Dr.

Otto reprimanded him in strong terms for this dishonorable and cruel act, at which the monomaniac seemed much surprised, and informed him that he was irresistibly urged to murder somebody, and cared not who was the victim. The professor then asked him, in a taunting tone, if he had not conceived a design against *his* life. The unfortunate man acknowledged it, but added, that he had sufficient control over himself to preserve the existence of a benefactor. The doctor took his arm, and they proceeded to the hospital, where he was immediately confined. He almost instantly became furiously maniacal, and in a few months after died.

This inclination to homicide is often caused by some hallucination of the mind connected with the subject of religion. During the middle of the last century, in Denmark, a number of persons killed several children, under the notion, that by committing murder, and being afterwards condemned to die, they would be better able, by public marks of repentance and conversion, as they went to the scaffold, to prepare themselves for death, and work out their salvation. A young man killed his mother, who was suffering from a protracted illness, under the notion, that he was an angel especially sent



to release her from her sufferings. A woman deliberately killed four of her children with a hammer. The reasons she assigned for this atrocious crime were as follows : — during her pregnancy with each of these children, she had a strong and uncontrollable propensity to thieve ; and imagining that her children would all turn out robbers, she murdered them. Many persons have been known to kill others under the hope, that they would be hanged for the crime.

“A woman, about thirty-six years of age, who had been well educated, but whose conduct had not been exempt from some irregularities, in consequence of intemperance and manifold disappointments, had become affected with madness. She was by turns furious and melancholy, and conceived she had murdered one of her children, for which she ought to suffer death. She detailed the manner in which she had destroyed the child, and the motives which actuated her, so circumstantially, and with so much plausibility and feeling, that if I had not known her child to be living, I might have been deceived. By her own hands she had repeatedly endeavored to terminate her existence, but was prevented by constant vigilance and due restraint. Her disposition to suicide was after-

wards relinquished ; but she still persisted that for the murder of the child she ought to suffer death, and requested to be sent to Newgate in order to be tried, and undergo the sentence of the law ; indeed she appeared to derive consolation from the hope of becoming a public example, and expiating her supposed crime on the scaffold. While in this state, and with a hope of convincing her of its safety, the child was brought to visit her. When she beheld it there was a temporary burst of affection ; she kissed it, and for a few moments appeared to be delighted ; but a look of suspicion succeeded, and this was shortly followed by a frown of indignation, which rendered the removal of the child a measure of wholesome necessity. Perhaps in no instance was the buoyancy of madness more conspicuous over reason, recollection, and feeling. She insisted they had attempted to impose on her a strange child, which bore a faint resemblance to her own ; however, by such subterfuge she was not to be deceived ; she had strangled the child until life had totally departed, and it was not the order of nature that it should exist again. The effect of this interview was an exasperation of her disorder ; she became more cunning and malignant, and her desire for

an ignominious death was augmented. To render this more certain, and accelerate her projected happiness, she enticed into her apartment a young female patient, to whom she appeared to be attached ; and having previously plaited some threads of her bed-quilt into a cord, she fixed it round the neck of the young woman, and proceeded to strangle her. Fortunately some persons entered the room in time to save her. When this unhappy maniac was questioned concerning the motive, which induced her to attempt the destruction of a person for whom she had manifested kindness, she very calmly replied, that as the murder of her own child was disbelieved, she wished to exhibit a convincing proof of the ferocity of her nature, that she might instantly be conveyed to Newgate and hanged, which she desired as the greatest blessing. With considerable satisfaction, I may add, that in a few months, notwithstanding that her derangement had been of three years' duration, this woman perfectly recovered, and for a considerable time has performed the duties of an important and respectable office.

“Influenced by curiosity, and a wish for the advancement of professional knowledge, I have always been induced to scrutinize, as deeply as

possible, into the feelings of lunatics who have perfectly recovered. I therefore wished to be informed from this patient in her sane state, what were her feelings and opinions concerning her former condition. She recollected most of the circumstances which had transpired during her illness, but she was unable adequately to comprehend, or to give any account of her disorder. It seemed to her a wearisome and protracted dream, but more distinct and connected. She almost doubted, with her present feelings, if she could be the same person, to have entertained opinions and resentments so different from her natural character. When questioned concerning her attempt to strangle the young woman, she rejoiced that no fatal consequences had ensued, yet she seemed to attach but little responsibility to anything she might have committed in that frame of mind. Death, from which, as other human beings, she now shrunk with horror, was then the most desirable of all events. Respecting the child, she observed, her mind was as suddenly seized with the conviction, that she had destroyed it, as a person is attacked with the shivering fit of an ague, and feels the sensation of cold in the hottest day in summer. On inquiring if these former im-

pressions often recurred to her mind, she replied in the negative ; that although she could accurately recollect them when questioned, yet they now seemed removed to a vast distance from the natural range of her thoughts, and that she found herself pleasantly occupied in contriving plans for the welfare and happiness of her future life.”<sup>1</sup>

In some instances of homicidal insanity, the patient, after recovery, has no recollection of any of the circumstances which transpired during the paroxysm. A man under Dr. Haslam’s care had, during a fit of furious insanity, destroyed two children and a woman. He was confined, and died in a mad-house. On several occasions Dr. Haslam endeavored to draw from him some account of the motives, which induced him to destroy the children and the woman, but he uniformly and steadily persisted that he had no recollection whatever of such an occurrence. He said he understood he had done something which was very wicked, and for which he was confined, but he thanked God that he had no more memory of what had passed, than if he had committed it in his sleep. Another

<sup>1</sup> Dr. Haslam.

case is related by the same authority, of a lady who, during an attack of insanity, attempted to commit suicide. After the lapse of three weeks, as she was sitting in her usual manner, she uttered a shriek, appeared for a few moments in a state of alarm and confusion, and suddenly recovered. Dr. Haslam observes, "Of her repeated attempts at suicide she had not the slightest recollection."

The following case of homicidal insanity excited much attention in France, and excited amongst the medical profession considerable discussion : —

Henriette Cornier, a female servant, twenty-seven years of age, was of a mild and lively disposition, full of gaiety, and remarkably fond of children. Suddenly a singular change was observed in her deportment : she became silent, melancholy, disturbed in thought, and finally sunk into a state of stupor. This was in the month of June. She was dismissed from her place on account of her mental dejection, and in the month of September endeavored to commit suicide. In the following October she entered into the service of a Madame Fournier, still desponding and melancholy. On the 4th of November she suddenly conceived the hor-

rible purpose of murdering the child of a neighbor. Her mistress had gone out to walk, and ordered her to prepare dinner at the usual hour, and to go to a neighboring shop, kept by a woman of the name of Belan, to buy some cheese. She had often been to the shop before, and had always manifested great fondness for Belan's little girl, a beautiful child, nineteen months old. On this day she displayed her usual fondness for it, and persuaded the mother, who at first was unwilling, to let her take it out for a walk. Cornier then hastened back to her mistress's house with the child, and laying it across her own bed, severed its head from its body with a large kitchen knife. She subsequently declared that, while executing this horrible deed, she felt no particular emotion, either of pleasure or of pain. Shortly after, she said, the sight of the horrible spectacle before her eyes brought her to herself, and she experienced some emotions of fear. At the end of two hours, during which time she had remained chiefly in her own room, Madame Belan came, and inquired for her child from the bottom of the staircase. "*Your child is dead,*" calmly replied Henriette. The mother, who at first thought she was in jest, soon became alarmed, and rushed forward into the



chamber, where she beheld the mutilated and bloody fragments of her child. At that moment Cornier snatched up the head of the murdered infant, and threw it into the street through the open window. A crowd of persons rushed into the room, where Henriette was found sitting on a chair near the body of the child, gazing at it with the bloody knife by her, her hand and clothes stained with gore. She made no attempt to escape, nor to deny the crime. She confessed all the circumstances, even her premeditated design, and the perfidy of her caresses, which had persuaded the unhappy mother to entrust her with the infant. It was impossible to excite in her any sentiment of remorse or grief. "*I intended to kill the child,*" was her constant reply ; adding, that the idea had taken possession of her mind, and that "*she was destined to do it.*" When asked why she threw the head out of the window, she answered that it was to attract public notice, that people might come into the room and see that she alone was guilty. This unfortunate creature was tried on the 27th of February, 1826, when the medical witnesses declared, that though they could not adduce any positive proof of her insanity, yet they were equally unable to pronounce her sane.

She was again brought to trial on the 24th of June, when the Jury returned a verdict of guilty of committing homicide voluntarily, but not with premeditation, and she was sentenced to hard labor for life.

This case of Cornier appeared to have a contagious influence upon others. A country gentleman, enjoying perfect health, after reading in the paper an account of the indictment of Cornier, awoke in the course of the night with a desire to kill his wife, who was lying beside him. He left his wife's bed for a time, but within three weeks the same murderous impulse seized possession of him. This man did not evince the slightest mental disorder. His business was prosperous; he had never experienced any domestic cares; and he had no cause of complaint or jealousy in regard to his wife, whom he fondly loved, and with whom he lived on the most affectionate terms. This unfortunate man was at last obliged to separate himself from his wife, fearful that he might yield to the atrocious impulse.

Dr. Marechal relates the case of a lady unhappily married. She had a child, whom she nursed for the period of three months, at which time she became melancholy, and was often

seen in tears. One day, when sitting near the fire, she exclaimed with eagerness and agony, "Snatch the child from me, or I will throw it in the flames." She then confessed that for a long time she had been struggling against an almost irresistible impulse to destroy the child, and that on approaching a window or fire the desire always revived. The infant was taken from her; she became melancholy; and lamenting her unhappy propensity attempted suicide. She recovered, but three years afterwards had a relapse; and in the second month of nursing was seized with the same unnatural propensity, and after resisting its force for some time, again parted with the child, and horrified at her own condition, repeatedly tried to commit self-destruction.<sup>1</sup>

The previously related cases will, I think, satisfactorily establish that there is a form of insanity, the principal symptom of which is a morbid desire to sacrifice human life. In these cases no intellectual delusion is perceptible. The unfortunate monomaniacs retain a vivid consciousness of their melancholy situation, often endeavor to subdue their unnatural pro-

<sup>1</sup> Archives Générales de Médecine, vol. xii.

pensity, and bitterly lament its existence. In many of these cases, however, even when the reasoning faculties appear to be in a healthy state, and no delusion manifests itself, I do not think that we are altogether justified in concluding, that the disease has its exclusive seat in the moral powers of the mind. It is my belief that, if the mental condition of these patients were carefully inquired into, we should generally discover the presence of some hallucination or perversion of the mental faculties, conjoined with the horrible destructive impulses which appear to be the only indications of the presence of insanity. But I am willing to admit, that in the majority of these cases of homicidal insanity, the intellectual faculties, as contradistinguished from the moral perceptions and powers, give no evidence of disease.

What, it may be asked, are the peculiar or characteristic symptoms by which we are enabled to distinguish this form of insanity, in which the individual is not responsible for his conduct, from actions which are essentially vicious, and which justly render the persons amenable to punishment? Can we safely draw the line of demarcation between vice and moral disease? Where does one commence and the

other terminate? I am willing to confess that it is difficult to answer such interrogatories satisfactorily. The subject is necessarily involved in many obscurities. Like all great truths, whether medical, theological, or political, this has been injured by the indiscreet advocacy and zeal of enthusiasts. If it be said, that the impulse to commit murder is the result of a disease of the moral propensities, you will afford a ready and convenient palliation and excuse for the most atrocious offences. Society will no longer be safe. The prospect of punishment will not deter men from the perpetration of crime. The person disposed to murder his fellow creature may reason himself into the act, under the impression, that he will be pronounced a moral maniac, and that consequently he may escape the punishment awarded by the law. This is the mode in which many reason on this subject, and I am not surprised that doubt should exist in the minds of the public, as to the existence of a form of insanity, which is termed homicidal, when we consider the natural tendency of many of the arguments advanced by those who have endeavored to elucidate this intricate subject.

In forming an estimate of the criminality of

any act, the motives which may have led to its commission are always to be taken into serious consideration. Crime is generally premeditated. The party perpetrating the offence is usually influenced by an animus, by a desire to plunder, or to conceal some other crime of which he may be guilty. He may be driven to take away the life of a fellow-creature under the excitement of overpowering passion, revenge, jealousy, anger, &c. In such cases there generally exist real motives or principles of action. The murder is preconcerted ; the criminal conceals his intention, secures the means of escape, and does his best to avoid the chance of detection. In these cases a motive is invariably present ; the man does not act from blind impulse, neither is he disposed to murder those who have done him no injury. His natural instinct would induce him to recoil with horror from the idea of sacrificing those related to him by the closest ties of consanguinity. Such, however, is not the case with the unfortunate homicidal maniac. He is driven to the commission of crimes the most abhorrent to his very nature. He murders those most dear to him. He often struggles against these horrible and unnatural impulses ; he is influenced by no motives, (unless he should

be laboring under some delusion,) he confesses his morbid propensity, and has been known to incarcerate himself in order to avoid the possibility of indulging in his atrocious desires. These cases are accompanied by other symptoms, by means of which we are, in the majority of cases, enabled to form something like a correct diagnosis of the disease. There are certain premonitory indications which generally precede the development of the murderous impulse. A moral and physical change take place, and manifest themselves generally for some period, before the monomaniac exhibits any desire to kill. In many cases these symptoms are not perceptible, and are not believed to have existed; the homicidal desire has evinced itself without any precursory signs of moral disorder. But if such cases were attentively examined, I believe that in every instance the murderous impulse would be found to have been preceded by a derangement of the bodily and mental health, which has escaped observation. This form of insanity is usually accompanied by a desire to commit suicide; in fact suicide is often attempted before the person manifests any desire to kill others. Nervous, hysterical women are more subject to this malady. Often the patient has been pre-



viously afflicted with fits of epilepsy, long continued chronic indigestion, derangement of the liver and bowels. His spirits have been depressed ; his habits become changed ; he is morose, and is subject to fits of abstraction and melancholy. Occasionally his whole moral and mental constitution appear to have undergone a complete revolution. From being irreligious he may suddenly appear to be under the influence of intense devotional feeling ; this is a common feature in this form of insanity ; he becomes extravagant in his habits, is fond of solitude, and avoids his own family. Frequently the physical indications are very perceptible ; the symptoms of corporeal disturbance may be acute in their character ; but this is not always the case. Dr. Pritchard lays down the following rules for the detection of these cases ; they are based upon the conjoint observations of M. Esquirol and himself.

“ 1. Acts of homicide, perpetrated or attempted by insane persons, have generally been preceded by other striking peculiarities of action, noted in the conduct of these individuals ; often by a total change of character.

“ 2. The same individuals have been discovered in many instances to have attempted

suicide, to have expressed a wish for death ; sometimes they have begged to be executed as criminals.

“ 3. These acts are without motive, they are in opposition to the known influences of all human motives. A man murders his wife and children, known to have been tenderly attached to them ; a mother destroys her infant.

“ 4. The subsequent conduct of the unfortunate individual is generally characteristic of his state. He seeks no escape or flight, delivers himself up to justice, acknowledges the crime laid to his charge, describes the state of mind which led to its perpetration ; or he remains stupefied and overcome by a horrible consciousness of having been the agent in an atrocious deed.

“ 5. The murderer has generally accomplices in vice and crime ; there are assignable inducements which led to its commission, motives of self-interest, of revenge, displaying wickedness premeditated. In some instances, the acts of the madman are premeditated, but his premeditation is peculiar and characteristic. There is also a presumption of insanity, where the individual has either been previously insane, or affected by epilepsy.”

Mr. Sampson, in his able and interesting work on "Criminal Jurisprudence," has endeavored, with considerable ingenuity, to establish, that the tendency to homicide is awakened and encouraged by the operation of what he terms our "sanguinary laws." It is not my purpose, on this occasion, to discuss the propriety of abolishing, in every case, the punishment of death ; but those, who are disposed to believe that the extreme penalty of the law ought never to be enforced, will find Mr. Sampson's facts and arguments invaluable. He maintains that capital punishment has the effect of developing in the minds of others a destructive impulse, as well as exciting that tendency to imitate, which is inherent in every mind. He considers that the punishment of death, instead of producing a beneficial effect upon the minds of persons laboring under homicidal tendencies, actually, in many cases, stimulates them to the commission of the crime. He infers, from an attentive examination of the subject, that at least in two out of three instances, suicide has been attempted previously to the perpetration of the murder, and that the state of mind, which impels them to commit murder, renders them desirous of self-destruction. Those, who are found most

frequently at executions, are persons in whom the destructive propensity is in a state of morbid excitability. The fact mentioned by Mr. Ewart in the House of Commons, and referred to by Mr. Sampson, certainly strengthens his position. It appears, that out of 167 persons who had been executed during a certain period, 164 were found to have been present at executions. In order to prove that capital punishments have an injurious tendency on the mind, Mr. Sampson quotes from the "Metropolitan Magazine" the following case. The writer says, "We knew a healthy, robust, independent gentleman, who went some years since with the sheriff into the interior of Newgate, to visit a malefactor, who was to be executed the same day. After the drop had fallen, he went with others to the breakfast table, where he could think of nothing but the execution he had witnessed ; and, before he left, he requested the sheriff to procure the rope with which the man had been suspended. It may be mentioned, that it was not an execution of common occurrence. Possessing one rope, it subsequently occurred to him, as the next much-talked-of execution was to take place, that he would also have the rope used on that occasion. In the course of a short time, he had

a collection of ropes, labelled, and carefully deposited in a drawer. About two years after the penchant for collecting ropes had manifested itself, it was observed by his friends, that his conversation most frequently turned on the subject of the executions he had witnessed, and the success he had met with in procuring such a number of ropes, which he usually brought out to exhibit to his friends, expatiating on the comparative merits or demerits of the sufferers, until at length his society became unbearable, and he received the sobriquet of 'the man with the pensile idea.' He lived about fourteen years after witnessing the first execution, at last putting an end to his own life, by suspending his body with one of the ropes he had collected from the common hangman."

With reference to the moral culpability and responsibility of persons affected by this form of insanity, much, *pro* and *con*, has been said. Many have questioned the existence of a state of derangement, confined solely to the moral perceptions and powers. There is no doubt of the occurrence of this form of insanity, and when its presence is clearly established, the person so unhappily afflicted ought not to be considered as a responsible agent. In most cases,

he has no power over the train of thought ; his will is diseased ; he has no motive for the crime ; he struggles for a considerable time against the diseased impulse, till at last it overpowers him, and he rushes upon a fellow-creature and takes away his life. When such an exculpatory plea is urged, the causes should be particularly inquired into ; the evidence in support of the presence of moral insanity ought to be clear and convincing.

There are certain states of mind which do not come legitimately within the legal or medical definition of insanity, to which, in connexion with this subject, it is necessary to advert. In the mental conditions to which I refer, the mind is undoubtedly unsound, although no particular or permanent delusion, or hallucination, may be present. I allude particularly to crimes committed during a fit of drunkenness, *delirium tremens*, and somnambulism, or by a person after being suddenly roused from sleep, when the mind is disordered by some horrible dream. Such cases have and may again become the subject of judicial consideration.

Drunkenness is no extenuation of crime in the eye of the law. "He who is guilty of any crime whatever, through drunkenness, shall be

punished for it as much as if he had been sober.”<sup>1</sup> “A drunkard,” says Coke,<sup>2</sup> “is *voluntarius dæmon*, hath no privilege thereby. But if, by continual drunkenness, he have been absolutely mad, then the original cause is not referred to, and he may be excused; that is, however, if there be only a predisposition to temporary madness, and that madness be voluntarily excited by drinking,” Lord Ferrers, previous to the murder of his steward, drank porter to excess. John Day, of Dereham in Norfolk, after a fit of drunkenness, rose in the middle of the night, and cut the throats of his father and mother, ravished the servant-maid in her sleep, and afterwards murdered her. These men were condemned and executed.

In considering this subject, we should remember that there is a form of insanity, the distinguishing feature of which is an inveterate, uncontrollable, and morbid propensity for intoxicating liquors. Persons have been known to suffer from periodical attacks of this kind. Weeks and often months have elapsed between these periodical paroxysms, during which period the individual has exhibited no propensity of the

<sup>1</sup> 1 Hawk. P. C. 3.

<sup>2</sup> Coke, Instit.



kind. The following case is related of a man who had an attack of this nature every month. When this disordered appetite developed itself, he would procure a large quantity of spirits, and after shutting himself up in a room, would drink until he became quite intoxicated. This he would do every day, as long as the fit lasted. He then recovered, and would carefully avoid all inebriating drink, until his insanity again appeared. There was no doubt of this man's insanity. Persons who have received blows or wounds of the head are often subject to temporary fits of frenzy, when under the influence of spirits. But such a plea cannot be urged as a palliation of crime. "There are many men," says Mr. Justice Story, "soldiers who have been severely wounded in the head especially, who well know that excess makes them mad; but if such persons wilfully deprive themselves of reason, they ought not to be excused one crime by the voluntary perpetration of another."

The late Sir J. Mackintosh remarks, when speaking on this subject, that "as example of punishment does not influence the man who is drunk, any more than one who is mad, it is plain, that to hang a man for what he does

under such circumstances, is to make drunkenness, when followed by an accidental consequence, a capital offence. His execution will not deter drunkards from murder; if it operate in any way, it can only deter men who are sober from drunkenness." Sir J. Mackintosh relates the following case, which occurred to him when he was acting as a judge in India. "An Irish artillery-man, in a violent fit of drunkenness, wrested a sword from the hands of a comrade, ran with it two or three miles on the road, and at last killed a poor old unarmed and unoffending sepoy of police. There was nothing to extenuate the crime, except the drunkenness. The prisoner was respited." But there are cases on record in which a very opposite conclusion has been arrived at. Mr. Alison is disposed to concur in the views expressed by the late Sir J. Mackintosh, and to consider drunkards not generally responsible for acts committed when in a fit of intoxication.<sup>1</sup> If a person in a paroxysm of drunkenness take away the life of a fellow-creature, or does any other serious injury, there can be no question, if he be recommended to royal mercy, that he

<sup>1</sup> Principles of the Criminal Laws of Scotland.

ought to be most seriously punished. Should the person be an habitual drunkard, and by a long continued use of spirits, or other intoxicating liquors, have produced organic disease of the brain, I am disposed to believe, that under such circumstances, he has, when excited by drink, no control over his impulses. No general rule, however, can be laid down applicable to all cases indiscriminately. The particular facts connected with each case must be calmly weighed, before a just inference can be drawn. The law throws its protection around those who are guilty of criminal acts, during an attack of what is termed *delirium tremens*.

Persons have been known to commit the crime of murder, whilst in a state of somnambulism, or sleep-walking, and also during that half unconscious condition between sleeping and waking. Cases of this description are extremely perplexing to medical jurists. If it could be satisfactorily proved that the person perpetrated the murder whilst in this state — if the fact was unequivocally established — then, I conceive, it ought to be considered as a good exculpating plea. It should never, however, be forgotten, that these cases are easily simulated. Examples of this character are recorded by medical writers.

A person has been suddenly roused by a frightful dream, and, whilst under its influence, has been known to take away human life. Suicide has been committed under analogous circumstances. A person, apparently well, has gone to bed without manifesting the slightest tendency to self-destruction; he has awoke suddenly, and destroyed himself. A case, said to be illustrative of this, is related in a highly respectable and able medical journal. It is as follows: "An old lady residing in London awoke in the middle of the night, went down stairs, and threw herself into a cistern of water, where she was found drowned." But where is the proof that the suicide was the result of certain mental impressions conjured up in the mind during a dream? Dr. Pagan refers to the following interesting case to prove that murder may be committed by a person when under the effects of a frightful vision.

Bernard Schedmaizig suddenly woke at midnight; at the moment he saw a frightful phantom, or what his imagination represented as such — a fearful spectre! He twice called out, "Who is that?" and, receiving no answer, and imagining that the phantom was advancing upon him, and having altogether lost his self-posses-

sion, he raised a hatchet which was beside him, and attacked the spectre, and it was found that he had murdered his wife.

I will only relate the particulars of another case of this description. It came to the knowledge of the writer of an article in the "British and Foreign Medical Review." "A pedlar, who was in the habit of walking about the country, armed with a sword-stick, was awakened one evening, while lying asleep on the high road, by a man suddenly seizing him, and shaking him by the shoulders. The man, who was walking by with some companions, had done this out of a joke. The pedlar suddenly woke, drew his sword, and stabbed the man, who soon afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel, on the ground that he could not have been conscious of his act in the half waking state. This was strengthened by the opinions of medical witnesses: He was, however, found guilty." The murder, in this instance, may have been the result of passion. We have no evidence to the contrary.

The reader will have but little difficulty in perceiving, from what has been previously advanced in this work, that no certain or well

defined principles have as yet been laid down by men, who rank high amongst the most distinguished writers on English jurisprudence, for our guidance in cases of criminal insanity. When such questions have come before the judicial tribunals of the country, the presiding judge, in his charge to the jury, has invariably referred to the *dicta* of preceding administrators of the law, and has quoted their definition or description of insanity, as an unerring test of the presence of mental derangement in any case in which the malady is alleged to exist.

How absurd, upon reflection, must such a course of procedure be. Has not our knowledge of the disorders of the mind advanced during the last fifty years? Do we not know more of insanity than our professional brethren did, who lived in the days of Coke, Mansfield, and Erskine? If so, how ridiculous it is to cite their opinions, or to bind us down to the authority of men, whose information on this subject must of necessity have been extremely limited and circumscribed. The judges of the land appear to have no settled or clear views on the subject of insanity. This may, in a great measure, result from their attempting to define the disease. Insanity does not admit of being

defined. It is not in the power of any human being to embody within the limits of a definition all the peculiar and characteristic symptoms of mental derangement. The malady assumes so many forms, and exhibits itself in such Protean shapes, that it is out of our power to give anything bearing the semblance of a correct or safe definition of the disorder — such a definition that could be referred to as a standard in doubtful cases of deranged mind. If it be difficult to embrace within the bounds of one sentence anything like a true description of the symptoms of general mental aberration, *à fortiori* how abortive must be the attempt to lay down any rule by which we are to test in any particular case the presence or absence of moral responsibility. After a consideration of the cases which have been brought forward in this work, it must be evident, that the capability of “distinguishing between right and wrong,” is not an unerring test to which to appeal. A person may be perfectly competent to draw a correct distinction between right and wrong, and yet labor under a form of insanity, which ought unquestionably to protect him from legal or moral responsibility. I allude to cases of insanity where the patient is driven, by an irresistible impulse,



to destroy, after struggling, for some time, against the morbid desire, being, at the same time, perfectly conscious that he is impelled to do what is wrong both in the sight of God and man. Were the legal test to be rigidly applied in this case, the unfortunate maniac would have no chance of escaping. To my conception the law draws a most absurd distinction between civil and criminal insanity. A person, who exhibits the slightest aberration of mind, is considered to be incapable of discharging his duties as a citizen, is not allowed to have the management of his affairs, cannot make a will, and is safely shut up in a madhouse; but should the same individual, pronounced by the commissioners of lunacy to be of unsound mind, commit, in a moment of frenzy, a criminal act, he is considered amenable to the law. He may fancy himself the King of England, a tub of butter, or a pane of glass, yet be viewed responsible for his conduct; and, if he be guilty of a capital crime whilst laboring under any of these delusions, he is liable to undergo the extreme penalty of the law, provided no connexion can be established between the act and his mental hallucination. The law on this subject is clear. Collinson says, "Neither is any person against whom a

commission of lunacy may be sustained, of a description to commit offence with impunity. To excuse a man in the commission of a crime, he must, at the period when he committed the offence, have been wholly incapable of distinguishing between good and evil, or of comprehending the nature of what he is doing ; a state of mind distinct from that which is merely unequal to the pursuit of a regular line of conduct, or the management of private affairs.”<sup>1</sup> If such be the law, does it not need considerable alteration ?

I would say a few words respecting the examination of medical witnesses. He should, when called upon to give evidence in cases of insanity, never forget that he has nothing to do with the legal definition of the term. No medical man is competent, in every case, to say, whether the party, supposed to be deranged, is or is not competent to draw a line of distinction between good and evil, right and wrong. The legitimate point which the medical witness has to decide is this : had the alleged lunatic, at the time he committed the offence, sufficient control over his actions ? It is absurd to believe that any amount

<sup>1</sup> Law of Lunacy, vol. i. p. 474.

of medical information, or metaphysical knowledge, which the witness may be in possession of, will enable him to form anything like an accurate notion of the lunatic's capability of distinguishing between right and wrong. Above all things, the medical man should avoid defining insanity. Counsel, knowing the obscurity of the subject, and conscious of the difficulties with which medical men have to contend in arriving at a correct opinion, most unfairly, in their examination, endeavor to tie them down to definitions; and then, by showing their fallacy, weaken the whole effect of their testimony. As I have formerly observed, there is nothing so easily seized upon as a definition; therefore the witness should be cautious in committing himself by attempting to define insanity. It will be better and wiser for him at once to acknowledge his incapacity to do so, than by a vain and ostentatious display of metaphysical lore, to peril the life of a fellow creature.

In forming an estimate of the mental state of any person, for the protection of whom insanity has been urged as a plea, there are other circumstances to be taken into consideration. Is the insanity simulated? Persons conversant with the peculiarities of disordered mind, who have

been in the habit of observing the manner of the insane, will have but little difficulty in detecting real from feigned derangement. Georget maintains that "it is impossible for a person, who has not made the insane a subject of study, to simulate madness so as to deceive a physician well acquainted with the disease." The person, who is desirous of appearing insane, generally exhibits his sanity by overacting the part of a madman. The real maniac, although known to be deranged, will often absolutely deny that he is so. He becomes greatly indignant at the manifestation of the slightest suspicion of insanity. His delusions are seldom admitted to exist. He fancies that the predominant idea which may have influenced him to commit a crime is founded upon actual circumstances, not upon a false creation of the imagination. If a man kill another under the belief that the individual whose life he has sacrificed was his secret enemy, and was conspiring against him, after the deed is perpetrated, he will obstinately adhere to his morbid hallucination. But there are cases in which the party will confess himself to have been driven to an act of homicide, not by any illusion of mind, but by an internal impulse, against the influence of which he was

incapable of contending. The mind may exhibit no deviation from health, yet the feelings or effective powers may be greatly disordered. But even cases of this kind may be feigned. It would be easy for a person, in order to escape punishment, to urge that he was driven by an irresistible impulse to murder. In the examination of those who make such a confession, it will not be difficult to discover whether a moral insanity is present. As Marc justly observes, "The moral circumstances, which precede, or accompany crime, generally show whether they are the result of criminal intentions, or derangement of intellect ; that is to say, that in a real criminal there is always some motive of personal interest, by which the moral cause of his act may be known."

In a previous part of this work, I have ventured to express an opinion, opposed I know to that generally entertained by many who have written on this subject. I again repeat, that I am not prepared to give an unqualified assent to the dogma, that in every case of mental derangement, — without any reference to its degree or character, — ought the person to be screened from the penalty awarded by the laws for criminal offences. I am ready to admit, that

if insanity be clearly established to exist, a *primâ facie* case is made out in favor of the prisoner ; but that because a person may be proved to be strange and wayward in his character ; to fancy himself a beggar when he may have the wealth of a Cræsus, or to be ill when he is in the buoyancy of health—to believe that such a person ought, of necessity, to be exonerated from all responsibility, is a doctrine as unphilosophical and untenable, as it is opposed to the safety and well being of society.

## APPENDIX.

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### OPINIONS OF THE ENGLISH JUDGES IN REGARD TO THE LAW RELATING TO ALLEGED CRIMES COM- MITTED BY PERSONS AFFLICTED WITH INSANE DELUSIONS.

THE following questions of law were propounded to the judges by the Lord Chancellor on the part of the House of Lords : —

1st. What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons ; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit ?

2d. What are the proper questions to be submitted to the jury, when a person, alleged to be afflicted with insane delusion respecting one or



more particular subjects or persons, is charged with the commission of a crime, (murder, for example,) and insanity is set up as a defence?

3d. In what terms ought the questions to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?

4th. If a person, under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?

5th. Can a medical man conversant with the disease of insanity, who never saw the prisoner previous to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law; or whether he was laboring under any and what delusion at the time?

On the 19th of June, 1843, the following answers were returned by the judges to the above questions:—

Mr. Justice Maule. — I feel great difficulty in answering the questions put by your Lordships on this occasion: first, because they do not appear to arise out of and are not put with

reference to a particular case, or for a particular purpose, which might explain or limit the generality of their terms, so that full answers to them ought to be applicable to every possible state of facts, not inconsistent with those assumed in the questions; this difficulty is the greater, from the practical experience of the bar and the court being confined to questions arising out of the facts of particular cases; secondly, because I have heard no argument at your Lordship's bar or elsewhere on the subject of these questions, the want of which I feel the more, the greater is the number and the extent of questions which might be raised in argument; and thirdly, from a fear, of which I cannot divest myself, that as these questions relate to matters of criminal law of great importance and frequent occurrence, the answers to them by the judges may embarrass the administration of justice when they are cited in criminal trials. For these reasons I should have been glad if my learned brethren would have joined me in praying your Lordships to excuse us from answering these questions; but as I do not think they ought to induce me to ask that indulgence for myself individually, I shall proceed to give such answers as I can, after the very short time

which I have had to consider the questions, and under the difficulties I have mentioned, fearing that my answers may be as little satisfactory to others as they are to myself. The first question, as I understand it, is in effect, what is the law respecting alleged crime, when at the time of the commission of it the accused knew he was acting contrary to the law, but did the act with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit? If I were to understand this question according to the strict meaning of its terms, it would require, in order to answer it, a solution of all questions of law which could arise on the circumstances stated in the question, either by explicitly stating and answering such questions, or by stating some principles or rules which would suffice for the solution. I am quite unable to do so; and, indeed, doubt whether it be possible to be done; and therefore request to be permitted to answer the question only so far as it comprehends the question, whether a person, circumstanced as stated in the question, is for that reason only to be found not guilty of a crime respecting which the question of his guilt has been duly raised

in a criminal proceeding ; and I am of opinion, that he is not. There is no law that I am aware of, that makes persons in the state described in the question not responsible for their criminal acts. To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong. The terms used in the question cannot be said (with reference only to the usages of language) to be equivalent to a description of this kind and degree of unsoundness of mind. If the state described in the question be one which involves or is necessarily connected with such an unsoundness, this is not a matter of law, but of physiology ; and not of that obvious and familiar kind as to be inferred without proof ; secondly, the questions necessarily to be submitted to the jury are those questions of fact which are raised on the record. In a criminal trial the question commonly is, whether the accused be guilty or not guilty ; but in order to assist the jury in coming to a right conclusion on this necessary and ultimate question, it is usual and proper to submit such subordinate or intermediate questions, as the

course which the trial has taken may have made it convenient to direct their attention to. What those questions are, and the manner of submitting them, is a matter of discretion for the judge; a discretion to be guided by a consideration of all the circumstances attending the inquiry. In performing this duty it is sometimes necessary or convenient to inform the jury as to the law; and if on a trial, such as is suggested in the question, he should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my answer to the first question, as being, in my opinion, the law on this subject; thirdly, there are no terms which the judge is by law required to use. They should not be inconsistent with the law as above stated, but should be such as, in the discretion of the judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused. Fourth, the answer which I have given to the first question is applicable to this. Fifth, whether a question can be asked depends, not merely on the question of fact raised on the record, but on the course of the cause at the time it is proposed to ask it; and the state of an inquiry as to the guilt of a

person charged with a crime, and defended on the ground of insanity, may be such that such a question as either of those suggested is proper to be asked and answered, though the witness has never seen the person before the trial, and though he has been present and heard the witnesses ; these circumstances, of his never having seen the person before and of his having been present at the trial, not being necessarily sufficient, as it seems to me, to exclude the lawfulness of a question which is otherwise lawful, though I will not say that an inquiry might not be in such a state, as that these circumstances should have such an effect. Supposing there is nothing else in the state of the trial to make the question suggested proper to be asked and answered, except that the witness had been present and heard the evidence, it is to be considered whether that is enough to sustain the question. In principle it is open to this objection, that, as the opinion of the witness is founded on those conclusions of fact which he forms from the evidence, and as it does not appear what those conclusions are, it may be that the evidence he gives is on such an assumption of facts as to make it irrelevant to the inquiry. But such questions have been

very frequently asked, and the evidence to which they have been directed has been given, and has never that I am aware of been successfully objected to. Evidence most clearly open to this objection, and on the admission of which the event of a most important trial probably turned, was received in the case of *The Queen v. M'Naughten*, tried at the Central Criminal Court in March last, before the Lord Chief Justice, Mr. Justice Williams, and Mr. Justice Coleridge, in which counsel of the highest eminence were engaged on both sides; and I think the course and practice of receiving such evidence, confirmed by the very high authority of these judges, who not only received it, but left it, as I understand, to the jury without any remark derogating from its weight, ought to be held to warrant its reception, notwithstanding the objection in principle to which it may be open. In cases even where the course of practice in criminal law has been unfavorable to parties accused, and entirely contrary to the most obvious principles of justice and humanity, as well as those of law, it has been held that such practice constituted the law, and could not be altered without the authority of parliament.



Tindal, C. J. — My Lords, her Majesty's judges, with the exception of Mr. Justice Maule, who has stated his opinion to your Lordships, in answering the questions proposed to them by your Lordships' House, think it right in the first place to state that they have forborne entering into any particular discussion upon these questions, from the extreme and almost insuperable difficulty of applying those answers to cases in which the facts are not brought judicially before them. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case, and it is their duty to declare the law upon each particular case on facts proved before them, and after hearing argument of counsel thereon. They deem it at once impracticable, and at the same time dangerous to the administration of justice if it were practicable, to attempt to make minute applications of the principles involved in the answers given them by your Lordships' questions: they have therefore confined their answers to the statements of that which they hold to be the law upon the abstract questions proposed by your Lordships; and as they deem it unnecessary in this particular case

to deliver their opinions seriatim, and as all concur in the same opinion, they desire me to express such their unanimous opinion to your Lordships. In answer to the first question, assuming that your Lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land. As the third and fourth questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases, that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction ; and that, to establish a defence on the ground of insanity, it must be clearly proved, that, at the time of commit-

ting the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle, that every one must be taken conclusively to know it, without proof that he does know it. If the accused were conscious that the act was one which he ought not to do, and if that act was at the same time contrary to

the law of the land, he is punishable ; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong ; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require. The answer to the fourth question must of course depend on the nature of the delusion ; but making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real. For example, if, under the influence of delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was, that the diseased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment. In answer to the last question, we state to your Lordships, that we think the medical man, under

the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide ; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

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